

STATE OF NORTH CAROLINA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES  
DIVISION OF WATER QUALITY

**GENERAL PERMIT NCG560000**

TO DISCHARGE PESTICIDES PRODUCTS UNDER THE

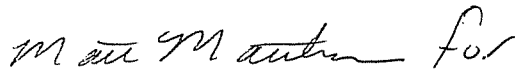
**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

In compliance with the provision of North Carolina General Statute 143-215.1, other lawful standards and regulations promulgated and adopted by the North Carolina Environmental Management Commission, and the Federal Water Pollution Control Act, as amended, this permit is hereby issued to all applicators, hereafter Permittees, which are covered by this permit as evidenced by receipt of a Certificate of Coverage (CoC) from the Environmental Management Commission or to holders of a valid Department of Agriculture and Consumer Services Pesticide Applicators license in lieu of a Certificate of Coverage until January 31, 2012 to allow the discharge of Pesticide Products in accordance with the effluent limitations, monitoring requirements, and other conditions set forth in this permit.

This permit becomes effective on January 1, 2012.

This permit and the authorization to discharge expire at midnight, October 31, 2016.

Signed this day December 13, 2011

A handwritten signature in cursive script, appearing to read "Coleen H. Sullins for".

Coleen H. Sullins, Director  
Division of Water Quality  
By Authority of the Environmental Management Commission

**1.0 Coverage under This Permit.** Until **January 31, 2012** this permit covers any person that meets the eligibility requirements identified in Part 1.1 of this permit and holds a valid pesticide applicators license or submits a Notice of Intent (NOI) in accordance with Part 1.2. A Permittee generally includes both (1) the entity with control over the financing for, or the decision to perform pesticide applications, including the ability to modify those decisions, that results in a discharge to waters of the State and (2) the entity with day-to-day operational control of or who performs activities (e.g., the application of pesticides) that are necessary to ensure compliance with the permit (e.g., they are authorized to direct workers to carry out activities required by the permit or perform such activities themselves). As such, more than one person may be responsible for compliance with this permit for any single discharge from the application of pesticides.

## **1.1 Eligibility**

**1.1.1 Activities Covered.** This permit is available to Permittees who discharge to waters of the state from the application of (1) biological pesticide products or (2) chemical pesticide products that leave a residue (hereinafter collectively “pesticides”), when the pesticide application is for one of the following pesticide use patterns:

- a. Mosquito and Other Flying Insect Pest Control** – to control public health/nuisance and other flying insect pests in or above standing or flowing water. Public health/nuisance and other flying insect pests in this use category include but are not limited to mosquitoes and black flies.
- b. Aquatic Weed and Algae Control** – to control invasive or other nuisance weeds and algae in water and at water's edge, including irrigation ditches and/or irrigation canals.
- c. Aquatic Animal Pest Control** –to control invasive or other pest animals in water and at water's edge. Animals in this use category include, but are not limited to fish, lampreys, and mollusks.
- d. Forest Canopy Pest Control** - aerial application of a pesticide over a forest canopy to control the population of a pest species where to target the pests effectively a portion of the pesticide unavoidably will be applied over and deposited to water.
- e. Intrusive Vegetation Control**- to control vegetation along roads, utility rights of way, canals or ditches where to target the intrusive species effectively a portion of the pesticide will unavoidably be applied over or deposited into Water of the State.

**1.1.2 Discharges to Water Quality Impaired Waters.** You are not eligible for coverage under this permit for any discharges from a pesticide application to Waters of the State if the water is identified as impaired by that pesticide or its degradates. For purposes of this permit, impaired waters are those that have been identified on the North Carolina 303(d) list, available on the Internet [<http://portal.ncdenr.org/web/wq/ps/mtu/assessment>]. If your discharge would not be eligible because the water is listed as impaired for that specific pesticide, but you have evidence that shows the water is no longer impaired, submit any supporting information to the Division with your NOI.

## 1.2 Coverage under this Permit

### 1.2.1 How to obtain a CoC. An applicator must:

- a. Meet the eligibility requirements identified in Part 1.1, **and**
- b. If your operations are identified in Part 1.2.2, submit a complete and accurate NOI.

*NOTE: Applicators meeting the eligibility provisions outlined in Part 1.1 and whose discharges are **not** subject to the requirement to submit an NOI, as identified in Part 1.2.2, are automatically authorized to discharge after January 31, 2012 in compliance with the requirements of this permit.*

Coverage under this permit is for the Person who filed the NOI, including its employees, contractors, subcontractors, and other agents, for all activities identified on the NOI for the duration of this permit. If a submitted NOI is not timely, accurate, or complete, then any employee, contractor, subcontractor or other entity that discharges without the required NOI is not covered by this permit.

### 1.2.2 Persons required to submit an NOI. The following applicators are required to submit an NOI to obtain coverage under this permit:

- a. If you are in control over the financing for, or over the decision to perform pest control activities that will result in a discharge and know or reasonably should have known that those activities will exceed one or more of the annual (i.e., calendar year) treatment area thresholds listed in Table 1 below for the “treatment area,” as defined in Appendix A, or
- b. If you apply pesticides that result in a discharge and know or reasonably should have known that those activities will exceed one or more of the pesticide application annual (i.e., calendar year) treatment area thresholds listed in Table 1 below for the “treatment area,” as defined in Appendix A. To determine whether an entity’s activities will exceed one or more of the annual treatment area thresholds, the entity should exclude from its calculation any pesticide application activities conducted under another entity’s NOI required under (a) above.
- c. Application of pesticides by a licensed researcher by or in conjunction with a manufacturer, university or similar organizations are exempt from this permit

Note: Federal Rules 40 CFR 122.3 lists exclusions from the NPDES program. The exclusion list includes the introduction of pollutants from non-point source agricultural and silvacultural activities, including storm water runoff from orchards, cultivated crops and range lands and forest lands and return flows from irrigated agriculture.

<b>Table 1. Annual Treatment Area Thresholds</b>	
<b>Pesticide Use</b>	<b>Annual Threshold</b>
Mosquitoes and Other Flying Insect Pests	15,000 acres of treatment area (adulticide applications only) <sup>1</sup>
Aquatic Weed and Algae Control:	
- In Water	1000 acres of treatment area
- At Water's Edge:	200 linear miles of treatment area at water's edge
Aquatic Nuisance Animal Control:	
- In Water	200 acres of treatment area
- At Water's Edge	200 linear miles of treatment area at water's edge
Forest Canopy Pest Control	10,000 acres
Intrusive Vegetation Control	500 linear miles

<sup>1</sup> Multiple applications to the same area are added together only for mosquito and other flying pest control

**1.2.3 Discharge Authorization Date.** Beginning January 31, 2012 you must be covered under an NPDES permit for discharges to waters of the state as a result of the application of a pesticide. Permittees are authorized to discharge under this permit consistent with Table 2 below.

<b>Table 2. Discharge Authorization Date</b>		
<b>I. Category</b>	<b>NOI Submittal Deadline</b>	<b>Discharge Authorization Date</b>
Applicators who know or should have reasonably known, prior to commencement of discharge, that they will exceed an annual treatment area threshold identified in Part 1.2.2 for that year.	At least 10 days prior to commencement of discharge. (Requirement waived until January 31, 2012)	No earlier than 10 days after the Division posts on the Internet receipt of your complete and accurate NOI.
Applicators who do not know or would reasonably not know until after commencement of discharge, that they will exceed an annual treatment area threshold identified in Part 1.2.2 for that year.	At least 10 days prior to exceeding an annual treatment area threshold. Requirement waived until January 31, 2012	Original authorization terminates when annual treatment area threshold is exceeded. Applicator is reauthorized no earlier than 10 days after the Division posts on the Internet receipt of your complete and accurate NOI.
Applicators commencing discharge in response to a <u>declared pest emergency situation</u> as defined in Appendix A.	After January 31, 2012 no later than 30 days after commencement of discharge.	Immediately, for activities conducted in response to declared pest emergency situation.

Timing for NOI submittal is based on when an applicator is aware that pesticide application[s] will exceed an annual treatment area threshold during the calendar year. Based on a review of your NOI or other information, the Division may:

- Delay issuance of your CoC for further review
- Determine that additional technology-based and/or water quality-based effluent limitations are necessary
- Deny coverage under this permit and require submission of an application for an individual NPDES permit, as detailed in Part 1.3.

**1.2.4 Continuation of this Permit.** If this permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with 40 CFR 122.6 and remain in force and effect. If you were authorized to discharge under this permit prior to the expiration date, any discharges authorized under this permit will automatically remain covered by this permit until the earliest of:

- a. Your authorization for coverage under a reissued permit or a replacement of this permit following your timely and appropriate submittal of a complete NOI requesting authorization to discharge under the new permit and compliance with the requirements of the NOI;
- b. The processing of your Rescission Request consistent with Part 1.2.5.1;
- c. The issuance or denial of an individual permit for a discharge resulting from application of a pesticide that would otherwise be covered under this permit;
- d. A formal permit decision by the Division not to reissue this general permit, at which time the Division will identify a reasonable time period for covered dischargers to seek coverage under an alternative general permit or an individual permit. Coverage under this permit will cease when coverage under another permit is granted/authorized; or
- e. The Division has informed you that you are no longer covered under this permit.

## **1.2.5 Rescinding Coverage**

**1.2.5.1 Submitting a Rescission Request.** To rescind the Certificate of Coverage, the Permittee must submit a complete and accurate Rescission Request. Authorization to discharge under this permit terminates at midnight of the day that a complete Rescission Request. If you submit a Rescission Request without meeting one or more of the conditions identified in Part 1.2.5.2, then your Notice of Termination is not valid. You are responsible for complying with the terms of this permit until your authorization is terminated. If you met the annual treatment area threshold for having to submit annual reports pursuant to Part 7, you must file an annual report for the portion of the year up through the date of your termination. The annual report is due no later than 45 days after your termination date.

**1.2.5.2 When to Submit a Rescission Request.** Permittees required to submit an NOI as identified in Part 1.2.2 must submit a Rescission Request within 30 days after one or more of the following conditions have been met:

- a. A new applicator has taken over responsibility for pest control activities covered under an existing CoC;

- b. You have ceased all discharges from the application of pesticides for which you obtained permit coverage and you do not expect to discharge during the remainder of the permit term for any of the use patterns as identified in Part 1.1.1; or
- c. You have obtained coverage under an individual permit or an alternative general permit for all discharges required to be covered by an NPDES permit, unless you obtained coverage consistent with Part 1.3, in which case coverage under this permit will terminate automatically.

**1.2.5.3** Applicators covered under this permit that are not required to submit an NOI are terminated from permit coverage when they no longer have a discharge from the application of pesticides or their discharges are covered under an NPDES individual permit or alternative NPDES general permit.

### **1.3 Individual Permit coverage**

**1.3.1 The Division Requiring Coverage under an Alternative Permit.** The Division may require you to apply for and/or obtain authorization to discharge under either an individual NPDES permit or an alternative NPDES general permit in accordance with 40 CFR 122.64 and 124.5. If the Division requires you to apply for an individual NPDES permit, the Division will notify you in writing that a permit application is required. This notification will include a brief statement of the reasons for this decision and will provide application information. In addition, if you are an applicator whose discharges are authorized under this permit, the notice will set a deadline to file the permit application, and will include a statement that on the effective date of the individual NPDES permit, or the alternative general permit as it applies to you, coverage under this general permit will terminate. the Division may grant additional time to submit the application if you submit a request setting forth reasonable grounds for additional time. If you are covered under this permit and fail to submit an individual NPDES permit application as required by the Division, then the applicability of this permit to you is terminated at the end of the day specified by the Division as the deadline for application submittal. The Division may take enforcement action for any unpermitted discharge or violation of any permit requirement.

**1.3.2 Applicator Requesting Coverage under an Alternative Permit.** If you do not want to be covered by this general permit, but need permit coverage, you can apply for an individual permit. In such a case, you must submit an individual permit application in accordance with the requirements of 40 CFR 122.26(c)(1)(ii), with reasons supporting the request, to the Division at the applicable NC DENR Regional Office listed in Part 8 of this permit. The request may be granted by issuance of an individual permit or authorization of coverage under an alternative general permit if your reasons are warranted.

When an individual NPDES permit is issued to you or you are authorized under an alternative NPDES general permit to discharge a pollutant to waters of the U.S. as a result of a pesticide application, your authorization to discharge under this permit is terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit.

**1.4 Severability.** Invalidation of a portion of this permit does not render the whole permit invalid. The Division's intent is that the permit will remain in effect to the extent possible; in the event that any part of this permit is invalidated, the remaining parts of the permit will remain in effect unless the Division issues a written statement otherwise.

**1.5 Other Federal and State Laws.** You must comply with all other applicable federal and state laws and regulations that pertain to your application of pesticides. For example, this permit does not negate the requirements under FIFRA and its implementing regulations to use registered pesticides consistent with the product's labeling. Additionally, there are other laws and regulations that may apply to certain activities that are also covered under this permit (e.g., United States Coast Guard regulations).

**2.0 Technology-Based Effluent Limitations**

To meet the effluent limitations in Part 2, you must implement site-specific control measures that minimize discharges of pesticides to waters of the state.

The terms "minimize" and "control measure" are defined in Appendix A.

**2.1. Minimize Pesticide Discharges to Waters of the State.** All applicators must minimize the discharge of pollutants resulting from the application of pesticides. All applicators must also:

- Apply pesticides at or below the highest rate allowed by the pesticide label.
- Perform regular maintenance activities to reduce leaks, spills, or other unintended discharges of pesticides associated with the application of pesticides covered under this permit.
- Maintain pesticide application equipment in proper operating condition by adhering to relevant manufacturer's conditions and industry practices, and by calibrating, cleaning, and repairing such equipment on a regular basis to ensure effective pesticide application and pest control. You must ensure that the equipment's rate of pesticide application is calibrated to deliver the appropriate quantity of pesticide needed to achieve greatest efficacy against the target pest.

**3.0 Water Quality-Based Effluent Limitations**

Your discharge must be controlled as necessary to meet applicable numeric and narrative state water quality standards.

If at any time you become aware, or the Division determines, that your discharge causes or contributes to an violation of applicable water quality standards, you must take corrective action as required in Part 6.

#### **4.0 Site Monitoring**

**4.1 Monitoring Requirements for Pesticide Applicators.** You must monitor the amount of pesticide applied to ensure that you are using the lowest amount to effectively control the pest, consistent with reducing the potential for development of pest resistance. You must also monitor your pesticide application activities to ensure you are performing regular maintenance activities and to ensure that your application equipment is in proper operating condition to reduce the potential for leaks, spills, or other unintended discharge of pesticides to waters of the U.S. Additionally, you must monitor your pesticide application activities to ensure that the application equipment is in proper operating condition by adhering to any relevant manufacturer's conditions and industry practices, and by calibrating, cleaning, and repairing equipment on a regular basis.

**4.2 Visual Monitoring Requirements for all Applicators.** All applicators covered under this permit must conduct spot checks in the area to and around where pesticides are applied for possible and observable adverse incidents, as defined in Appendix A, caused by application of pesticides, including but not limited to the unanticipated death or distress of non-target organisms and disruption of wildlife habitat, recreational or municipal water use. Visual assessments of the application site must be performed:

- a. During any post-application surveillance or efficacy check that you conduct, if surveillance or an efficacy check is conducted.
- b. During any pesticide application, when considerations for safety and feasibility allow.



**5.0. Pesticide Discharge Management Plan**

This Part applies to any applicator required to submit an NOI, as required in Part 1.2.2. Some sections of the Pesticide Discharge Management Plan (PDMP) will require input from the pesticide applicator.

If you are required to submit an NOI, you must prepare a PDMP for your pest management area. Your plan must be prepared by April 1, 2012. However, the PDMP does not need to be submitted to the Division of Water Quality unless specifically requested by the Division. You must keep the plan up-to-date thereafter for the duration of coverage under this general permit, even if your discharges subsequently fall below the applicable NOI threshold. You must develop a PDMP consistent with the deadline outlined in Table 3 below.

<b>Table 3. Pesticide Discharge Management Plan Deadline</b>	
<b>Category</b>	<b>PDMP Deadline</b>
Permittees who know or should have reasonably known, prior to commencement of discharge, that they will exceed an annual treatment area threshold identified in Part 1.2.2 for that year.	Prior to first pesticide application covered under this permit after April 1, 2012
Permittees who do not know or would reasonably not know until after commencement of discharge, that they will exceed an annual treatment area threshold identified in Part 1.2.2 for that year.	Prior to exceeding an annual treatment area threshold after April 1, 2012
Permittees commencing discharge in response to a <u>declared pest emergency situation</u> as defined in Appendix A that will cause the applicator to exceed an annual treatment area threshold.	No later than 90 days after responding to declared pest emergency situation after April 1, 2012

The PDMP does not contain effluent limitations; the limitations are contained in Parts 2 and 3 of the permit. The PDMP documents how you will implement the effluent limitations in Parts 2 and 3 of the permit, including your evaluation and selection of control measures to meet those effluent limitations and minimize discharges. In your PDMP, you may incorporate by reference any procedures or plans in other documents that meet the requirements of this permit. If you rely upon other documents to describe how you will comply with the effluent limitations in this permit, such as a pre-existing pest management plan, you must attach to your PDMP a copy of any portions of any documents that you are using to document your implementation of the effluent limitations. All permittee subject to the effluent limitations described above must implement control measures to satisfy the effluent limitations in Parts 2 and 3. This includes the permittee who submitted the NOI as well as any employees, contractors, subcontractors, or other agents. The control measures implemented must be documented and the documentation must be kept up-to-date.

## **5.1 Contents of Your Pesticide Discharge Management Plan**

**5.1.1 PDMP Team.** You must identify all the persons (by name and contact information) that compose the team as well as each person's individual responsibilities, including:

- a. Person(s) responsible for managing pests in relation to the pest management area
- b. Person(s) responsible for developing and revising the PDMP;
- c. Person(s) responsible for developing, revising, and implementing corrective actions and other effluent limitation requirements ; and
- d. Person(s) responsible for pesticide applications. If the pesticide applicator is unknown at the time of plan development, indicate whether or not a for-hire applicator will be used and when you anticipate that you will identify the applicator.

Identification of team members must include any written agreement(s) between you and any other applicator(s), such as a for-hire pesticide applicator, that specify the division of responsibilities between applicators as necessary to comply with the provisions of this permit.

**5.1.2 Pest Management Area Description.** You must document the following:

- a. Pest problem description. Describe the pest problem at your pest management area, including identification of the target pest(s), source of the pest problem, and source of data used to identify the problem
- b. General location map. In the plan, include a general surface area map (e.g., USGS quadrangle map, a portion of a city or county map, or other map) that identifies the geographic boundaries of the service area to which the plan applies and location of the waters of the State

**5.1.3 Schedules and Procedures.** You must document the following schedules and procedures in your PDMP:

**5.1.3.1** Pertaining to Control Measures Used to Comply with the Effluent Limitations in Part 2. The following must be documented in your PDMP:

- a. Spill Prevention. Procedures and maintenance activities for preventing spills and leaks of pesticides associated with the application of pesticides covered under this permit.
- b. Pesticide Application Equipment. Procedures for maintaining the pesticide application equipment in proper operating condition, including calibrating, cleaning, and repairing the equipment.
- c. Pest Surveillance. Procedures and methods for conducting pre- application pest surveillance, if necessary.

**5.1.3.2** Pertaining to Other Actions Necessary to Minimize Discharges. The following must be documented in your PDMP:

- a. Spill Response Procedures – At a minimum you must have:

1. Procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases. Employees who may cause, detect, or respond to a spill or leak must be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals should be a member of your PDMP team.
2. Procedures for notification of appropriate facility personnel, emergency response agencies, and regulatory agencies.
- b. Adverse Incident Response Procedures – At a minimum you must have:
  1. Procedures for responding to any incident resulting from pesticide applications;
  2. Procedures for notification of the incident, both internal to your agency/organization and external. Contact information for state/federal permitting agency, nearest emergency medical facility, and nearest hazardous chemical responder must be in locations that are readily accessible and available.
- c. Pesticide Monitoring Procedures – You must document procedures for monitoring consistent with the requirements in Part 4 including:
  1. The person (or position) responsible for conducting monitoring; and
  2. Procedures for documenting any observed impacts to non-target organisms resulting from your pesticide discharge.\

**5.1.4 Signature Requirements.** You must sign, date and certify your PDMP in accordance with Appendix B, Subsection B.11.

**5.2 Pesticide Discharge Management Plan Modifications.** You must modify your PDMP whenever necessary to address any of the triggering conditions for corrective action or when a change in pest control activities significantly changes the type or quantity of pollutants discharged. Changes to your PDMP must be made before the next pesticide application that results in a discharge, if practicable, or if not, as soon as possible thereafter. The revised PDMP must be signed and dated in accordance with Appendix B, Subsection B.11.

You must review your PDMP at a minimum once per calendar year and whenever necessary to update the pest problem identified and pest management strategies evaluated for your pest management area.

**5.3 Pesticide Discharge Management Plan Availability.** You must retain a copy of the current PDMP, along with all supporting maps and documents, at the address provided in the NOI. The PDMP and all supporting documents must be readily available, upon request, and copies of any of these documents provided, upon request, to the Division; a State, Territorial, Tribal, or local agency governing discharges or pesticide applications within their respective jurisdictions; and representatives of the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS). the Division may provide copies of your PDMP or other information related to this permit that is in its possession to members of the public. Any Confidential Business Information (CBI), as defined in 40 CFR Part 2, may be withheld from the public provided that a claim of confidentiality is properly asserted and documented in accordance with 40 CFR Part 2; however, CBI must be submitted to the Division, if requested, and may not be withheld from those staff within the Division, FWS, and NMFS cleared for CBI review.

## 6.0 Corrective Action

**6.1 Situations Requiring Revision of Control Measures.** If any of the following situations occur, you must review and, as necessary, revise the evaluation and selection of your control measures to ensure that the situation is eliminated and will not be repeated in the future:

- a. An unauthorized release or discharge associated with the application of pesticides (e.g., spill, leak, or discharge not authorized by this or another NPDES permit) occurs;
- b. You become aware, or the Division concludes, that your control measures are not adequate/sufficient for the discharge to meet applicable water quality standards;
- c. Any monitoring activities indicate that you failed to:
  1. Perform regular maintenance activities to reduce leaks, spills, or other unintended discharges of pesticides associated with the application of pesticides covered under this permit; or
  2. Maintain pesticide application equipment in proper operating condition by adhering to any manufacturer's conditions and industry practices, and by calibrating, cleaning, and repairing such equipment on a regular basis to ensure effective pesticide application and pest control. You must ensure that the equipment's rate of pesticide application is calibrated to deliver the precise minimum quantity of pesticide needed to achieve greatest efficacy against the target pest.
- d. An inspection or evaluation of your activities by a State official reveals that modifications to the control measures are necessary to meet the non-numeric effluent limits in this permit, or
- e. You observe, for example, during visual monitoring in Part 4.2, or are otherwise made aware of, an adverse incident, as defined in Appendix A.

**6.2. Corrective Action Deadlines.** If you determine that changes to your control measures are necessary to eliminate any situation identified in Part 6.1, such changes must be made before the next pesticide application that results in a discharge if practicable, or if not, as soon as possible thereafter.

**6.3 Effect of Corrective Action.** The occurrence of a situation identified in Part 6.1 may constitute a violation of the permit. Correcting the situation according to Part 6.1 does not absolve you of liability for any original violation. However, failure to comply with Part 6.1 constitutes an additional permit violation. the Division will consider the appropriateness and promptness of corrective action in determining enforcement responses to permit violations.

the Division or a court may impose additional requirements and schedules of compliance, including requirements to submit additional information concerning the condition(s) triggering corrective action or schedules and requirements more stringent than specified in this permit. Those requirements and schedules will supersede those of Part 6.1 if such requirements conflict.

## **6.4 Adverse Incident Documentation and Reporting**

### **6.4.1 Twenty-Four (24) Hour Adverse Incident Notification**

If you observe or are otherwise made aware of an adverse incident, as defined in Appendix A, that may have resulted from a discharge from your pesticide application, you must immediately notify your NC DENR Regional Office. This notification must be made by telephone within 24 hours of you becoming aware of the adverse incident and must include at least the following information:

- a. The caller's name and telephone number;
- b. Applicator name and mailing address;
- c. If covered under an NOI, the NOI NPDES tracking number;
- d. The name and telephone number of a contact person, if different than the person providing the 24-hour notice;
- e. How and when you became aware of the adverse incident;
- f. Description of the location of the adverse incident;
- g. Description of the adverse incident identified and the EPA pesticide registration number and brand name for each product you applied in the area of the adverse incident; and
- h. Description of any steps you have taken or will take to correct, repair, remedy, cleanup, or otherwise address any adverse effects.

If you are unable to notify the Division within 24 hours, you must do so as soon as possible and also provide your rationale for why you were unable to provide such notification within 24 hours.

The adverse incident notification and reporting requirements are in addition to what the registrant is required to submit under FIFRA section 6(a)(2) and its implementing regulations at 40 CFR Part 159.

Reporting of adverse incidents is not required under this permit in the following situations:

- (1) You are aware of facts that clearly establish that the adverse incident was not related to toxic effects or exposure from the pesticide application.
- (2) You have been notified in writing by the Division that the reporting requirement has been waived for this incident or category of incidents.
- (3) You receive information notifying you of an adverse incident but that information is clearly erroneous.
- (4) An adverse incident occurs to pests that are similar in kind to pests identified as potential targets on the FIFRA label.

**6.4.2 Thirty (30) Day Adverse Incident Written Report.** Within 30 days of a reportable adverse incident pursuant to Part 6.4.1, you must provide a written report of the adverse incident to the appropriate NC DENR Regional Office. Your adverse incident report must include at least the following information:

- a. Information required to be provided in Part 6.4.1;
- b. Date and time you contacted the Division notifying the adverse incident and who you spoke with at the Division and any instructions you received from the Division;
- c. Location of incident, including the names of any waters affected and appearance of those waters (sheen, color, clarity, etc);
- d. A description of the circumstances of the adverse incident including species affected, estimated number of individual and approximate size of dead or distressed organisms;
- e. Magnitude and scope of the effected area (e.g. aquatic square area or total stream distance affected);
- f. Pesticide application rate, intended use site (e.g., banks, above, or direct to water), method of application, brand name of pesticide product, and EPA registration number;
- g. Description of the habitat and the circumstances under which the adverse incident occurred (including any available ambient water data for pesticides applied);
- h. If laboratory tests were performed, indicate what test(s) were performed, and when, and provide a summary of the test results within 5 days after they become available;
- i. If applicable, explain why you believe the adverse incident could not have been caused by exposure to the pesticide;
- j. Actions to be taken to prevent recurrence of adverse incidents; and
- k. Signed and dated in accordance with Appendix B, Subsection B.11.

You must report adverse incidents even for those instances when the pesticide labeling states that adverse effects may occur.

**6.4.3 Adverse Incident to Threatened or Endangered Species or Critical Habitat**

Notwithstanding any of the other adverse incident notification requirements of this section, if you become aware of an adverse incident affecting a federally-listed threatened or endangered species or its federally-designated critical habitat, that may have resulted from a discharge from your pesticide application, you must immediately notify the National Marine Fisheries Service (NMFS) in the case of an anadromous or marine species, or the U.S. Fish and Wildlife Service (FWS) in the case of a terrestrial or freshwater species. This notification must be made by telephone immediately upon your becoming aware of the adverse incident and must include at least the following information:

- The caller's name and telephone number;
- Applicator name and mailing address;
- The name of the affected species;
- How and when you became aware of the adverse incident;
- Description of the location of the adverse incident;
- Description of the adverse incident, including the EPA pesticide registration number for each product you applied in the area of the adverse incident; and
- Description of any steps you have taken or will take to alleviate the adverse impact to the species.

Additional information (including contact information for Adverse Incident Reports) on threatened or endangered species and critical habitat is available from NMFS ([www.nmfs.noaa.gov](http://www.nmfs.noaa.gov)) for anadromous or marine species or FWS ([www.fws.gov](http://www.fws.gov)) for terrestrial or freshwater species.

## **6.5 Reportable Spills and Leaks**

### **6.5.1 Spill, Leak, or Other Unpermitted Discharge Notification**

Where a leak, spill, or other release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, or 40 CFR Part 302 occurs in any 24-hour period, you must notify the National Response Center (NRC) immediately at (800) 424-8802 or in accordance with the requirements of 40 CFR Part 110, 40 CFR Part 117, and 40 CFR Part 302 as soon as you have knowledge of the release. Contact information must be in locations that are readily accessible and available in the area where the spill, leak, or other unpermitted discharge may occur.

State or local requirements may necessitate also reporting spills or leaks to local emergency response, public health, or drinking water supply agencies.

### **6.5.2 Five-Day Spill, Leak, or Other Unpermitted Discharge Documentation**

Within 5 days of you becoming aware of a spill, leak, or other unpermitted discharge triggering the notification in Part 6.5.1, you must document and retain the following information:

- a. Information required to be provided in Part 6.5.1
- b. Summary of corrective action taken or to be taken including date initiated and date completed or expected to be completed;
- c. Any measures to prevent recurrence of such a spill or leak or other discharge, including notice of whether PDMP modifications are required as a result of the spill or leak.

### **6.6 Other Corrective Action Documentation.** For situations identified in Part 6.1, other than for adverse incidents (addressed in Part 6.4), or reportable spills or leaks (addressed in Part 6.5), you must document the situation triggering corrective action and your planned corrective action within five (5) days of you becoming aware of that situation and retain a copy of this documentation. This documentation must include the following information:

- a. Identification of the condition triggering the need for corrective action review, including any ambient water quality monitoring that assisted in determining that discharges did not meet water quality standards;
- b. Brief description of the situation;
- c. Date the problem was identified.
- d. Brief description of how the problem was identified and how the applicator learned of the situation and date the applicator learned of the situation;
- e. Summary of corrective action taken or to be taken including date initiated and date completed or expected to be completed; and
- f. Any measures to prevent recurrence of such an incident, including notice of whether PDMP modifications are required as a result of the incident.

**7.0 Recordkeeping and Reporting**

Applicators must keep written records as required by this permit. These records must be accurate and complete and sufficient to demonstrate your compliance with the conditions of this permit. You can rely on records and documents developed for other obligations, such as requirements under FIFRA, and State pesticide programs, provided all requirements of this permit are satisfied.

The Division recommends that all applicators covered under this permit keep records of acres or linear miles treated for all applicable use patterns covered under this general permit. The records should be kept up-to-date to help you determine if you will meet the annual treatment area threshold during any calendar year, as identified in Part 1.2.2.

**7.1. All applicators must keep the following records:**

- a. A copy of this permit (an electronic copy is also acceptable)
- b. A copy of any Adverse Incident Reports (See Part 6.4.2)
- c. Your rationale for any determination that reporting of an identified adverse incident is not required consistent with allowances identified in Part 6.4.1.
- d. A copy of any corrective action documentation (See Part 6.6)

**7.2. This part applies to any entity required to submit an NOI and to any pesticide applicator hired by such entity to perform activities covered under this permit. Records listed below are required to be kept at the address provided on the NOI, as identified in Part 1.2.2. Records of equipment maintenance and calibration are to be maintained only by the entity performing the pest application activity (on behalf of self or client).**

- a. A copy of the NOI submitted to the Division, any correspondence exchanged between you and the Division specific to coverage under this permit, and a copy of the acknowledgment letter assigning your CoC number;
- b. The date on which you knew or reasonably should have known that you would exceed an annual treatment area threshold during any calendar year, as identified in Part 1.2.2;
- c. Target pest(s);
- d. Company name and contact information for pesticide applicator
- e. Pesticide application date(s);
- f. Description of treatment area, including location and size (acres or linear feet) of treatment area and identification of any waters, either by name or by location, to which you discharged any pesticide(s);
- g. Name of each pesticide product used including the EPA registration number;
- h. Amount (volume or weight) of pesticide formulation or active ingredient applied per unit of measure (must specify)
- i. Any unusual or unexpected effects identified to non-target organisms
- j. Documentation of any equipment cleaning, calibration, and repair (to be kept by pesticide application equipment applicator);
- k. A copy of your PDMP, including any modifications made to the PDMP during the term of this permit.



- 7.3.** All required records must be documented as soon as possible but no later than 14 days following completion of such activity. You must retain any records required under this permit for at least 3 years from the date that your coverage under this permit expires or is terminated. You must make available to the Division upon request, including an authorized representative of the Division, all records kept under this permit upon request and provide copies of such records, upon request.

## Appendix A Definitions, Abbreviations, and Acronyms

**Action Threshold** – The point at which pest populations or environmental conditions can no longer be tolerated necessitating that pest control action be taken based on economic, human health, aesthetic, or other effects. Sighting a single pest does not always mean control is needed. Action thresholds help determine both the need for control actions and the proper timing of such actions.

**Active Ingredient** – any substance (or group of structurally similar substances if specified by the Agency) that will prevent, destroy, repel or mitigate any pest, or that functions as a plant regulator, desiccant, or defoliant within the meaning of FIFRA sec. 2(a). [40 CFR 152.3] Active ingredient also means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for the production of such a pesticidal substance. [40 CFR 174.3]

**Adverse Incident** – means an incident that you have observed upon inspection or of which you otherwise become aware, in which:

- (1) There is evidence that a person or non-target organism has been exposed to a pesticide residue, and
- (2) The person or non-target organism suffered a toxic or adverse effect.

The phrase “toxic or adverse effects” includes effects that occur within waters of the state on non-target plants, fish or wildlife that are unusual or unexpected (e.g., effects are to organisms not otherwise described on the pesticide product label or otherwise not expected to be present) as a result of exposure to a pesticide residue, and may include:

- Distressed or dead juvenile and small fishes
- Washed up or floating fish
- Fish swimming abnormally or erratically
- Fish lying lethargically at water surface or in shallow water
- Fish that are listless or nonresponsive to disturbance
- Stunting, wilting, or desiccation of non-target submerged or emergent aquatic plants
- Other dead or visibly distressed non-target aquatic organisms (amphibians, turtles, invertebrates, etc.)

The phrase, “toxic or adverse effects,” also includes any adverse effects to humans (e.g., skin rashes) or domesticated animals that occur either directly or indirectly from a discharge to waters of the U.S. that are temporally and spatially related to exposure to a pesticide residue (e.g., vomiting, lethargy).

**Applicator** – any entity involved in the application of a pesticide that results in a discharge to waters of the State. that meets either or both of the following two criteria:

- (i) The entity has control over the financing for, or the decision to perform pesticide applications that result in discharges, including the ability to modify those decisions; or

- (ii) The entity has day-to-day control of or performs activities that are necessary to ensure compliance with the permit (e.g., they are authorized to direct workers to carry out activities required by the permit or perform such activities themselves).

**Best Management Practices (BMPs)** – are examples of control measures that may be implemented to meet effluent limitations. These include schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to minimize the discharge of pollutants to waters of the State. BMPs also include treatment requirements, operating procedures, and practices to control spillage or leaks, waste disposal, or drainage from raw material storage. [40 CFR 122.2]

**Biological Control Agents** – These agents are organisms that can be introduced to your sites, such as herbivores, predators, parasites, and hyperparasites. [Source: US FWS IPM Guidance, 2004]

**Biological Pesticides (also called biopesticides)** - include microbial pesticides, biochemical pesticides and plant-incorporated protectants (PIP). Microbial pesticide means a microbial agent intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or dessicant, that (1) is a eucaryotic microorganism including, but not limited to, protozoa, algae, and fungi; (2) is a procaryotic microorganism, including, but not limited to, Eubacteria and Archaeobacteria; or (3) is a parasitically replicating microscopic element, including but not limited to, viruses. [40 CFR 158.2100(b)] Biochemical pesticide mean a pesticide that (1) is a naturally-occurring substance or structurally-similar and functionally identical to a naturally-occurring substance; (2) has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically-derived biochemical pesticides, is equivalent to a naturally-occurring substance that has such a history; and (3) Has a non-toxic mode of action to the target pest(s). [40 CFR 158.2000(a)(1)] Plant-incorporated protectant means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. It also includes any inert ingredient contained in the plant, or produce thereof. [40 CFR 174.3]

**Chemical Pesticides** – all pesticides not otherwise classified as biological pesticides.

**Clean Water Act (CWA)** –Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq*

**Control Measure** – refers to any BMP or other method used to meet the effluent limitations. Control measures must comply with manufacturer specifications, industry standards and recommended industry practices related to the application of pesticides, and relevant legal requirements. Additionally, control measures could include other actions that a prudent applicator would implement to reduce and/or eliminate pesticide discharges to waters of the State to comply with the effluent limitations in Parts 2 and 3 of this permit.

**Cultural Methods** - manipulation of the habitat to increase pest mortality by making the habitat less suitable to the pest.

**Declared Pest Emergency Situation** – An event defined by a public declaration by a federal agency, state, or local government of a pest problem determined to require control through application of a

pesticide beginning less than ten days after identification of the need for pest control. This public declaration may be based on:

- (1) Significant risk to human health;
- (2) Significant economic loss; or
- (3) Significant risk to:
  - (i) Endangered species,
  - (ii) Threatened species,
  - (iii) Beneficial organisms, or
  - (iv) The environment.

[40 CFR 166]

**Director** – a Regional Administrator of the Environmental Protection Agency or an authorized representative. [excerpted from 40 CFR 122.2]

**Discharge** – when used without qualification, means the "discharge of a pollutant." [40 CFR 122.2]

**Discharge of a pollutant** – any addition of any "pollutant" or combination of pollutants to "waters of the State" from any "point source," or any addition of any pollutant or combination of pollutants to the water of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft that is being used as a means of transportation. This includes additions of pollutants into waters of the U.S. from: surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. [excerpted from 40 CFR 122.2]

**EPA Approved or Established Total Maximum Daily Loads (TMDLs)** – "EPA Approved TMDLs" are those that are developed by a State and approved by EPA. "EPA Established TMDLs" are those that are issued by EPA.

**Establishment** – generally a single physical location where business is conducted or where services or industrial operations are performed (e.g., factory, mill, store, hotel, movie theater, mine, farm, airline terminal, sales office, warehouse, or central administrative office).

**Facility or Activity** – any NPDES "point source" (including land or appurtenances thereto) that is subject to regulation under the NPDES program. [40 CFR 122.2]

**Federal Facility** – any buildings, installations, structures, land, public works, equipment, aircraft, vessels, and other vehicles and property, owned, operated, or leased by, or constructed or manufactured for the purpose of leasing to, the federal government.

**FIFRA** – Federal Insecticide, Fungicide, and Rodenticide Act [7 USC 136 et seq.]

**For-Hire Applicator** - Includes persons who make contractual pesticide applications for which they or their employer receives compensation (e.g., lawn care firms, pest control companies).

**Impaired Water** (or "Water Quality Impaired Water" or "Water Quality Limited Segment") – A water is impaired for purposes of this permit if it has been identified by a State, Territory, Tribe or EPA pursuant to Section 303(d) of the Clean Water Act as not meeting applicable State, Territorial, or Tribal

water quality standards (these waters are called “water quality limited segments” under 40 CFR 130.2(j)). Impaired waters include both waters with approved or established TMDLs, and those for which a TMDL has not yet been approved or established.

**Inert Ingredient** - any substance (or group of structurally similar substances if designated by the Agency), other than an active ingredient, that is intentionally included in a pesticide product,. [40 CFR 152.3] Inert ingredient also means any substance, such as a selectable marker, other than the active ingredient, where the substance is used to confirm or ensure the presence of the active ingredient, and includes the genetic material necessary for the production of the substance, provided that genetic material is intentionally introduced into a living plant in addition to the active ingredient. [40 CFR 174.3]

**Integrated Pest Management** – is an effective and environmentally sensitive approach to pest management that relies on a combination of common-sense practices. IPM uses current, comprehensive information on the life cycles of pests and their interaction with the environment. This information, in combination with available pest control methods, is used to manage pest damage by the most economical means, and with the least possible hazard to people, property, and the environment.

**Mechanical/Physical Methods** - mechanical tools or physical alterations of the environment, for pest prevention or removal.

**Minimize** - to reduce and/or eliminate pesticide discharges to waters of the U.S. through the use of “control measures” to the extent technologically available and economically practicable and achievable.

**Non-target Organisms** – includes the plant and animal hosts of the target species, the natural enemies of the target species living in the community, and other plants and animals, including vertebrates, living in or near the community that are not the target of the pesticide.

**North American Industry Classification System (NAICS)** – developed under the direction and guidance of the U.S. Office of Management and Budget (OMB) as the standard for use by Federal statistical agencies in classifying business establishments for the collection, tabulation, presentation, and analysis of statistical data describing the U.S. economy. NAICS is scheduled to be reviewed every 5 years for potential revisions with the most recent version being completed in 2007. Under NAICS, an establishment is generally a single physical location where business is conducted or where services or industrial operations are performed (e.g., factory, mill, store, hotel, movie theater, mine, farm, airline terminal, sales office, warehouse, or central administrative office). An enterprise, on the other hand, may consist of more than one location performing the same or different types of economic activities. Each establishment of that enterprise is assigned a NAICS code based on its own primary business activity. Ideally, the primary business activity of an establishment is determined by relative share of production costs and/or capital investment. In practice, other variables, such as revenue, value of shipments, or employment, are used as proxies. For this permit, the U.S. Environmental Protection Agency uses revenue or value of shipments to determine an establishment's primary business activity. Details of NAICS are available on the Internet at <http://www.census.gov/eos/www/naics/index.html>.

**Person** – an individual, association, partnership, corporation, municipality, public or private institutions, State or Federal agency, or an agent or employee thereof.

**Pest** – Consistent with 40 CFR 152.5, any organism under circumstances that make it deleterious to man or the environment, if it is:

- (a) Any vertebrate animal other than man;
- (b) Any invertebrate animal, including but not limited to, any insect, other arthropod, nematode, or mollusk such as a slug and snail, but excluding any internal parasite of living man or other living animals;
- (c) Any plant growing where not wanted, including any moss, alga, liverwort, or other plant of any higher order, and any plant part such as a root; or
- (d) Any fungus, bacterium, virus, or other microorganism, except for those on or in living man or other living animals and those on or in processed food or processed animal feed, beverages, drugs (as defined in FFDCA sec. 201(g)(1)) and cosmetics (as defined in FFDCA sec. 201(i)).

**Pest Management Area** – The area of land, including any water, for which you are conducting pest management activities covered by this permit.

**Pesticide** – means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (3) any nitrogen stabilizer, except that the term “pesticide” shall not include any article that is a “new animal drug” within the meaning of section 201(w) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(w)), that has been determined by the Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of section 201(x) of such Act (21 U.S.C. 321(x)) bearing or containing a new animal drug. The term “pesticide” does not include liquid chemical sterilant products (including any sterilant or subordinate disinfectant claims on such products) for use on a critical or semi-critical device, as defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321). For purposes of the preceding sentence, the term “critical device” includes any device that introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body and the term “semi-critical device” includes any device that contacts intact mucous membranes but which does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body. [FIFRA Section 2(u)]

The term “pesticide” applies to insecticides, herbicides, fungicides, rodenticides, and various other substances used to control pests. The definition encompasses all uses of pesticides authorized under FIFRA including uses authorized under sections 3 (registration), 5 (experimental use permits), 18 (emergency exemptions), 24(c) (special local needs registrations), and 25(b) (exemptions from FIFRA).

Note: drugs used to control diseases of humans or animals (such as livestock and pets) are not considered pesticides; such drugs are regulated by the Food and Drug Administration. Fertilizers, nutrients, and other substances used to promote plant survival and health are not considered plant growth regulators and thus are not pesticides. Biological control agents, except for certain microorganisms, are exempted from regulation under FIFRA. (Biological control agents include beneficial predators such as birds or ladybugs that eat insect pests, parasitic wasps, fish, etc).

*This permit uses the term “pesticide” when referring to the “pesticide, as applied.” When referring to the chemical in the pesticide product with pesticidal qualities, the permit uses the term “active ingredient.”*

**Pesticide Product** – a pesticide in the particular form (including composition, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.

**Pesticide Research and Development** – Activities undertaken on a systematic basis to gain new knowledge (research) and/or the application of research findings or other scientific knowledge for the creation of new or significantly improved products or processes (experimental development). These types of activities are generally categorized under the four-digit code of 5417 under the 2007 NAICS.

**Pesticide Residue** – includes that portion of a pesticide application that is discharged from a point source to waters of the State and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.

**Point source** – any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff. [40 CFR 122.2]

**Pollutant** – dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. For purposes of this definition, a “biological pesticide” is considered a “biological material,” and any “pesticide residue” resulting from use of a “chemical pesticide” is considered a “chemical waste.” [excerpted from 40 CFR 122.2]

**Target Pest** – the organism toward which pest control measures are being directed.

**Tier 3 Waters** – For antidegradation purposes, pursuant to 40 CFR 131.12(a)(3), Tier 3 waters are identified by States, Territories, or Tribes as having high quality waters constituting an Outstanding National Resource Water (ONRW), such as waters of National Parks and State Parks, wildlife refuges, and waters of exceptional recreational or ecological significance. That high water quality shall be maintained and protected.

**Total Maximum Daily Loads (TMDLs)** – A TMDL is a calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges; load allocations (LAs) for nonpoint sources and/or natural background, and must include a margin of safety (MOS) and account for seasonal variations. [See section 303(d) of the Clean Water Act and 40 CFR 130.2 and 130.7]

**Treatment Area** – The area of land including any waters, or the linear distance along water’s edge, to which pesticides are being applied. Multiple treatment areas may be located within a single “pest management area.”

The “treatment area” includes the entire area, whether over land or water, where the pesticide application is intended to provide pesticidal benefits. In some instances, the treatment area will be larger than the area where pesticides are actually applied. For example, the treatment area for a stationary drip treatment into a canal should be calculated by multiplying the width of the canal by the length over which the pesticide is intended to control weeds. The treatment area for a lake or marine area is the water surface area where the application is intended to provide pesticidal benefits.

Treatment area calculations for pesticide applications that occur “at water’s edge”, where the discharge of pesticides directly to waters is unavoidable, are determined by the linear distance over which pesticides are applied. Treating five miles of shoreline or coast would equal a five mile treatment area.

**Waters of the State** – Waters of the State [defined in NCGS 143-212 (6)] means:

Any stream, river, brook, swamp, lake, sound, tidal estuary, bay, creek, reservoir, waterway or other body of water or accumulations of water whether surface or underground, public or private, or natural or artificial, that is contained in, flows through, or borders upon any portion of this State, including any portion of the Atlantic Ocean over which the State has jurisdiction.

**Water Quality Impaired** – See ‘Impaired Water’.

**Water Quality Standards** – A water quality standard defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria necessary to protect the uses. Water quality standards also include an antidegradation policy and implementation procedures. See P.U.D. o. 1 of Jefferson County et al v. Wash Dept of Ecology et al, 511 US 701, 705 (1994). States, Territories, Tribes and EPA adopt water quality standards to protect public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act (See CWA sections 101(a)2 and 303(c)). Where necessary, EPA has the authority to promulgate federal water quality standards.

**Wetlands** - means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. [40 CFR 122.2]

**“You” and “Your”** – as used in this permit are intended to refer to the applicator as the context indicates and that party’s activities or responsibilities.



## Appendix B

### Standard Permit Conditions

Standard permit conditions in Appendix B generally are consistent with the permit provisions required in 40 CFR 122.41 but are modified to reflect the nature of discharges covered under this general permit.

#### **B.1 Duty to Comply.**

You must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

- A. You must comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards, even if the permit has not yet been modified to incorporate the requirement.
- B. Penalties for Violations of Permit Conditions: The Director will adjust the civil and administrative penalties listed below in accordance with the Civil Monetary Penalty Inflation Adjustment Rule (61 FR 252, December 31, 1996, pp. 69359-69366, as corrected in 62 FR 54, March 20, 1997, pp.13514-13517) as mandated by the Debt Collection Improvement Act of 1996 for inflation on a periodic basis. This rule allows the Division's penalties to keep pace with inflation. The Agency is required to review its penalties at least once every 4 years thereafter and to adjust them as necessary for inflation according to a specified formula. The civil and administrative penalties following were adjusted for inflation starting in 1996.

#### **1. Criminal Penalties.**

- 1.1 *Negligent Violations.* The CWA provides that any person who negligently violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to criminal penalties of not less than \$2,500 nor more than \$25,000 per day of violation, or imprisonment of not more than one year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation or by imprisonment of not more than two years, or both.
- 1.2. *Knowing Violations.* The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both.
- 1.3 *Knowing Endangerment.* The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he or she is placing another person in imminent danger of death or serious bodily injury shall upon conviction be subject to a fine of not more than \$250,000 or by imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30

years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the Act, shall, upon conviction of violating the imminent danger provision be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.

- 1.4. *False Statement.* The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both. The Act further provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

2. *Civil Penalties.* The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed the maximum amounts authorized by Section 309(d) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently \$37,500 per day for each violation).

3. *Administrative Penalties.* The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows

- 3.1. *Class I Penalty.* Not to exceed the maximum amounts authorized by Section 309(g)(2)(A) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently \$11,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$37,500).
- 3.2. *Class II Penalty.* Not to exceed the maximum amounts authorized by Section 309(g)(2)(B) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently \$11,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$157,500).

## **B.2 Duty to Reapply.**

Except as otherwise provided for in Part 1.2.4 of the permit, if you wish to continue an activity regulated by this permit after the expiration date of this permit, you must apply for and obtain authorization as required by the new permit once the Division issues it.

## **B.3 Need to Halt or Reduce Activity Not a Defense.**

It shall not be a defense for you in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

**B.4 Duty to Mitigate.**

You must take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

**B.5 Proper Operation and Maintenance.**

You must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by you to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by you only when the operation is necessary to achieve compliance with the conditions of this permit.

**B.6 Permit Actions.**

This permit may be modified, revoked and reissued, or terminated for cause. Your filing of a request for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

**B.7 Property Rights.**

This permit does not convey any property rights of any sort, or any exclusive privileges.

**B.8 Duty to Provide Information.**

You must furnish to the Division or an authorized representative (including an authorized contractor acting as a representative of the Division), within a reasonable time, any information which the Division may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. You must also furnish to the Division or an authorized representative upon request, copies of records required to be kept by this permit.

**B.9 Inspection and Entry.**

You must allow the Division or an authorized representative (including an authorized contractor acting as a representative of the Division), upon presentation of credentials and other documents as may be required by law, to:

- A. Enter upon your premises where a regulated activity is located or conducted, or where records must be kept under the conditions of this permit;
- B. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- C. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- D. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

**B.10 Monitoring and Records.**

- A. You must retain records of all reports required by this permit, and records of all data used to complete the Notice of Intent for this permit, for a period of at least three years from the date the permit expires or the date the applicator's authorization is terminated. This period may be extended by request of the Division at any time.

[As written, this permit does not require most applicators to perform the type of sample collection and monitoring described in the following sections of this appendix, B.10.B through B.10.F. However, when required, the sample collection and monitoring requirements in B.10.B – B.10.F of this appendix apply to those applicators that collect samples.]

- B. Samples and measurements taken for the purpose of monitoring must be representative of the volume and nature of the monitored activity.
- C. You must retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, for a period of at least three years from the date the permit expires or the date the applicator's authorization is terminated. This period may be extended by request of the Division at any time.
- D. Records of monitoring information must include:
1. The date, exact place, and time of sampling or measurements;
  2. The individual(s) who performed the sampling or measurements;
  3. The date(s) analyses were performed
  4. The individual(s) who performed the analyses;
  5. The analytical techniques or methods used; and
  6. The results of such analyses.
- E. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in the permit.
- F. The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

#### **B.11 Signatory Requirements.**

- A. All applications, including NOIs, must be signed as follows:
1. For a corporation: By a responsible corporate officer. For the purpose of this subsection, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated activity including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other

comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

2. For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or
3. For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this subsection, a principal executive officer of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit or the agency (e.g., Regional Administrator of EPA).

- B. Your Pesticide Discharge Management Plan (PDMP), including changes to your PDMP to document any corrective actions taken as required by Part 6, and all reports submitted to the Division, must be signed by a person described in Appendix B, Subsection B.11.A above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
  1. The authorization is made in writing by a person described in Appendix B, Subsection B.11.A;
  2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated activity such as the position of superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and
  3. The signed and dated written authorization is included in the PDMP. A copy must be submitted to the Division, if requested.
- C. All other changes to your PDMP, and other compliance documentation required under this permit, must be signed and dated by the person preparing the change or documentation.
- D. Changes to Authorization. If an authorization under Appendix B, Subsection B.11.A is no longer accurate because the application activities have been purchased by a different entity, a new NOI satisfying the requirements of Subsection B.11.A must be submitted to the Division. However, if the only change that is occurring is a change in contact information or a change in the applicator's address, the applicator need only make a modification to the existing NOI submitted for authorization.
- E. Any person signing documents in accordance with Appendix B, Subsections B.11.A or B.11.B above must include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information contained therein. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information contained is, to the best of my knowledge and belief, true, accurate,

and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

- F. The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

**B.12 Reporting Requirements.**

- A. Anticipated noncompliance. You must give advance notice to the Division of any planned changes in the permitted activity which may result in noncompliance with permit requirements.
- B. Transfers. This permit is not transferable to any person except after notice to the Division. Where an applicator wants to transfer coverage under the permit to a new applicator, the original permittee (the first applicator) must submit a Notice of Termination pursuant to Part 1.2.5. The new applicator must submit a Notice of Intent in accordance with Part 1.2. See also requirements in Appendix B, Subsections B.11.B and B.11.D.
- C. Pesticide Monitoring Reports. This permit does not require applicators to report monitoring results on a routine basis; however, the Division may, pursuant to Part 1.2.3, require certain applicators to monitor and report such results.
  - 1. When required, monitoring data must be submitted on a Discharge Monitoring Report (DMR) form, available at [www.epa.gov/npdes](http://www.epa.gov/npdes), and submitted to the Division at the appropriate Regional address identified in Part 9.2.
  - 2. If you monitor any pollutant more frequently than required using test procedures approved under 40 CFR Part 136 or as otherwise specified by the Division, the results of this monitoring must be included in the calculation and reporting of the data submitted to the Division.
  - 3. Calculations for all limitations which require averaging of measurements must use an arithmetic mean unless otherwise specified by the Division.
- D. Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit must be submitted no later than 14 days following each schedule date.
- E. Twenty-four hour reporting.
  - 1. In addition to adverse incident and spill reporting requirements in Parts 6.4 and 6.5, respectively, you must report any noncompliance which may endanger health or the environment. Any information must be provided orally within 24 hours from the time you become aware of the circumstances. A written submission must also be provided within five days of the time you become aware of the circumstances. The written submission must contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

2. For purposes of this permit, you must submit a 24-hour report under this section for any upset, as defined in Appendix B, Subsection B.13, which exceeds any effluent limitation in the permit.
3. the Division may waive the written report on a case-by-case basis for reports under Appendix B, Subsection B.12.E.2 if the oral report has been received within 24 hours.

- F. Other noncompliance. You must report all instances of noncompliance not reported under Appendix B, Subsections 12.A, 12.D, and 12.E, at the time any applicable annual or monitoring reports are submitted. The reports must contain the information listed in Appendix B, Subsection 12.E.1.
- G. Other information. Where you become aware that you failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Permitting Authority, you must promptly submit such facts or information.

**B.13 Upset.**

- A. Definition. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond your reasonable control. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. See 40 CFR 122.41(n)(1).
- B. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of Appendix B, Subsection B.13.C are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review. See 40 CFR 122.41(n)(2).
- C. Conditions necessary for a demonstration of upset. See 40 CFR 122.41(n)(3). An applicator who wishes to establish the affirmative defense of upset must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  1. An upset occurred and that you can identify the cause(s) of the upset;
  2. The permitted activity was at the time being properly operated; and
  3. You submitted notice of the upset as required in Appendix B, Subsection B.12.E.2 (24 hour notice).
  4. You complied with any remedial measures required under Appendix B, Subsection B.4.
- D. Burden of proof. In any enforcement proceeding, you, as the one seeking to establish the occurrence of an upset, have the burden of proof. See 40 CFR 122.41(n)(4).